

South Dakota Board of Social Work Examiners

dss.sd.gov/licensingboards/social.aspx

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Strong Families - South Dakota's Foundation and Our Future

DRAFT MEETING AGENDA Applied Behavior Analyst Committee South Dakota Board of Social Work Examiners February 1, 2021-1:00PM CT/12:00PM MT

Via- <https://zoom.us/j/91047771878?pwd=Rlc0QkVSYUtUSUVTZVdnRHM0cjlIdz09>
Or Call +1 312 626 6799 Meeting ID: 910 4777 1878 Passcode: 620342

Member Listing:

1. Vicki Isler, Ed.D., BCBA-D-Applied Behavior Analyst Committee
2. Amber Bruns, MS, BCBA-Applied Behavior Analyst Committee
3. Lisa Stanley, DVM, Lay Member-Applied Behavior Analyst Committee

-
1. Call to Order
 2. Roll Call
 3. Corrections or additions to the agenda
 4. Approval of the agenda
 5. Public Comment at 1:05 p.m.- *5 minutes for the public to address the Committee.*
 6. Discussion of Waivers
 7. Legislative Issues
 8. Adjourn

Enclosure – Additional Approved Waivers

Hospitals, Psychiatric Hospitals, and CAHs:

- **Emergency Medical Treatment and Active Labor Act (EMTALA).** CMS is waiving the enforcement of section 1867(a) of the Social Security Act (the Emergency Medical Treatment and Active Labor Act, or EMTALA). This will allow hospitals, psychiatric hospitals, and CAHs to screen patients at a location offsite from the hospital's campus to prevent the spread of COVID-19, in accordance with the state emergency preparedness or pandemic plan.
- **Verbal Orders.** CMS is waiving the requirements of §482.23, §482.24 and §485.635(d)(3) to allow for additional flexibilities related to verbal orders where read-back verification is still required but authentication may occur later than 48 hours. This will allow for more efficient treatment of patients in a surge situation. Specifically, the following requirements are waived:
 - §482.23(c)(3)(i)- If verbal orders are used for the use of drugs and biologicals (except immunizations), they are to be used infrequently;
 - §482.24(c)(2) - All orders, including verbal orders, must be dated, timed, and authenticated promptly by the ordering practitioner or by another practitioner who is responsible for the care of the patient;
 - §482.24(c)(3)- Hospitals may use pre-printed and electronic standing orders, order sets, and protocols for patient orders. This would include all subparts at §482.24(c)(3).
 - §485.635(d)(3)- Although the regulation requires medication administration be based on a written, signed order, this does not preclude the CAH from using verbal orders. A practitioner responsible for the care of the patient must authenticate the order in writing as soon as possible after the fact.
- **Reporting Requirements.** CMS is waiving the requirements at 42 C.F.R. §482.13(g) (1)(i)-(ii) which require hospitals to report patients in an intensive care unit whose death is caused by their disease process but who required soft wrist restraints to prevent pulling tubes/IVs may be reported later than close of business next business day, provided any death where the restraint may have contributed is continued to be reported within standard time limits. Due to current hospital surge, we are waiving this requirement to ensure hospitals are focusing on increased care demands and patient care.
- **Patient Rights.** 42 C.F.R. §482.13. CMS is waiving requirements under this section only for hospitals which are considered to be impacted by a widespread outbreak of COVID-19. Hospitals that are located in a State which has widespread confirmed cases (i.e., 6-50 or more confirmed cases), as updated under the CDC States Reporting Cases of COVID-19 to CDC at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> would not be required to meet the following requirements:
 - 42 C.F.R. §482.13(d)(2) with respect to timeframes in providing a copy of a medical record.

- 42 C.F.R. §482.13(h) related to Patient visitation, including the requirement to have written policies and procedures on visitation of patients who are in COVID-19 isolation and quarantine processes.
 - 42 C.F.R. §482.13(e)(C)(1)(ii) regarding seclusion.
- **Sterile Compounding.** 42 C.F.R. §482.25(b)(1) and §485.635(a)(3). CMS is waiving these requirements in order to allow used face masks to be removed and retained in the compounding area to be re-donned and reused during the same work shift in the compounding area only. This will conserve scarce face mask supplies which will help with the impending shortage of medications. While USP797 also outlines this, CMS will not be reviewing the use and storage of facemasks under these requirements.
- **Detailed Information Sharing for Discharge Planning for Hospitals and CAHs:** CMS is waiving the requirement to provide detailed information regarding discharge planning as outlined in 42 C.F.R. §482.43(a)(8), §482.61(e), and 485.642(a)(8), described below:

The hospital, psychiatric hospital, and CAH must assist patients, their families, or the patient's representative in selecting a post-acute care provider by using and sharing data that includes, but is not limited to, HHA, SNF, IRF, or LTCH data on quality measures and data on resource use measures. The hospital must ensure that the post-acute care data on quality measures and data on resource use measures is relevant and applicable to the patient's goals of care and treatment preferences.

- **Discharge Planning for Hospitals.** 42 C.F.R. §482.43(c) CMS is waiving all the requirements and subparts related to post-acute care services, so as to expedite the safe discharge and movement of patients among care settings, and to be responsive to fluid situations in various areas of the country. CMS is waiving the requirement that for those patients discharged home and referred for HHA services, or for those patients transferred to a SNF for post-hospital extended care services, or transferred to an IRF or LTCH for specialized hospital services, the hospital must:
 - §482.43(c)(1) include in the discharge plan a list of HHAs, SNFs, IRFs, or LTCHs that are available to the patient.
 - §482.43(c)(2) must inform the patient or the patient's representative of their freedom to choose among participating Medicare providers and suppliers of post-discharge servicesand that,
 - §482.43(c)(3) The discharge plan must identify any HHA or SNF to which the patient is referred in which the hospital has a disclosable financial interest, as specified by the Secretary, and any HHA or SNF that has a disclosable financial interest in a hospital under Medicare.
- **Medical Staff.** 42 C.F.R. §482.22(a) and §485.627(a).CMS is waiving these requirements to allow for physicians whose privileges will expire to continue practicing at the hospital or CAH and for new physicians to be able to practice in the hospital or CAH before full medical staff/governing body review and approval.

- **Medical Records Timing.** 42 C.F.R. §482.24(c)(4)(viii) and §485.638(a)(4)(iii). CMS is waiving these requirements related to medical records to allow flexibility in completion of medical records within 30 days following discharge and for CAHs that all medical records must be promptly completed. This flexibility will allow clinicians to focus on the patient care at the bedside during the pandemic.
- **Flexibility in Patient Self Determination Act Requirements (Advance Directives):** CMS is waiving the requirements at section 1902(a)(58) and 1902(w)(1)(A) for Medicaid, 1852(i) (for Medicare Advantage); and 1866(f) and 42 CFR 489.102 for Medicare, which require hospitals and CAHs to provide information about its advance directive policies to patients. We are waiving this requirement to allow for staff to more efficiently deliver care to a larger number of patients. This would not apply to the requirements at §482.13(a) for hospitals and at §485.608(a) for CAHs to receive information about the presence of a policy regarding the facility's recognition of advanced directives.
- **Physical Environment:** CMS is waiving certain requirements under the Medicare conditions at 42 C.F.R. §482.41 and §485.623 to allow for flexibilities during hospital, psychiatric hospital, and CAH surges. CMS will permit non-hospital buildings/space to be used for patient care and quarantine sites, provided that the location is approved by the State (ensuring safety and comfort for patients and staff are sufficiently addressed). This allows for increased capacity and promotes appropriate cohorting of COVID-19 patients.

Skilled Nursing Facilities

- **Staffing Data Submission:** CMS is waiving 42 CFR 483.70(q) to provide relief to long term care facilities on the requirements for submitting staffing data through the Payroll-Based Journal system.
- **Waive Pre-Admission Screening and Annual Resident Review (PASARR):** CMS is waiving the following requirements related to PASARR for nursing home residents who may also have a mental illness or intellectual disability (42 CFR §483.106(b)(4)).
 - Level I screens are not required for residents when they are being transferred between NFs (inter-facility transfers) and staff cannot enter nursing facilities due to quarantine. If the NF is not certain whether a Level I evaluation had been conducted at the resident's transferring/evacuating facility, a Level I can be conducted by the admitting facility during the first few days of admission as part of intake. If there is not enough information to complete a Level I evaluation, the NF must document this in the resident's case files. Level II evaluations and determinations are also not required preadmission when residents are being transferred between NFs. Residents who are transferred will receive a post admission review which must be completed as resources become available.
- **Physical Environment.** Provided that the State has approved the location as one that sufficiently addresses safety and comfort for patients and staff, CMS is waiving requirements under §483.90 to allow for a non-SNF buildings to be temporarily certified

as and available for use by a SNF in the event there are needs for isolation processes for COVID-19 positive residents which may not be feasible in the existing SNF structure to ensure care and services during treatment for COVID-19 is available while protecting other vulnerable adults. CMS believes this will also provide another measure that will free up inpatient care beds at hospitals for the most acute patients while providing beds for those still in need of care. CMS will revise processes, as necessary, to facilitate certification and surveys of these sites under this waiver. Waiver of certain conditions of participation and certification requirements for opening a NF if the state determines there is a need to quickly stand up a temporary COVID-19 isolation and treatment location.

- **Resident Groups.** CMS is waiving the requirements at §483.10(f)(5) which allow for residents to have the right to participate in-person in resident groups. This waiver would only permit the facility to restrict having in-person meetings during the national emergency given the recommendations of social distancing and limiting gatherings of more than ten people. Refraining from in-person gatherings will help prevent the spread of COVID-19.
- **Training and Certification of Nurse Aids** CMS is waiving the requirements at §483.35(d) which requires that a SNF and NF may not employ anyone for longer than 4 months unless they met the training and certification requirements under §483.35(d). CMS is waiving these requirements to assist in potential staffing shortages seen with the COVID-19 pandemic.

Home Health Agencies

- **Reporting:** Provides relief to Home Health Agencies on the timeframes related to OASIS Transmission. (**Approved on 3/13/2020- Clarified**) This waiver includes:
 - Extension of the 5-day completion requirement for the comprehensive assessment
 - Waives the 30-day OASIS submission requirement
- **Home Health 42 C.F.R. § 484.55(a).** Home health agencies can perform initial assessments and determine patients' homebound status remotely or by record review. This will allow patients to be cared for in the best environment while supporting infection control and reducing impact on acute care and long-term care facilities. This will allow for maximizing coverage by already scarce physician and advanced practice clinicians and allow those clinicians to focus on caring for patients with the greatest acuity.

Hospice:

- **Waive requirement for hospices to use volunteers.** CMS is waiving the requirement that hospices are required to use volunteers (including at least 5% of patient care hours). It is anticipated that hospice volunteer availability and use will be reduced related to COVID-19 surge and anticipated quarantine. (42 CFR §418.78(e))

- **Comprehensive Assessments:** CMS is waiving certain requirements for Hospice (§418.54) related to update of the comprehensive assessments of patients. This waiver applies the timeframes for updates to the comprehensive assessment (§418.54(d)). Hospices must continue to complete the required assessments and updates, however, the timeframes for updating the assessment may be extended from 15 to 21 days.
- **Waive Non-Core Services:** CMS is waiving the requirement for hospices to provide certain non-core hospice services during the national emergency, including the requirements at §418.72 for physical therapy, occupational therapy, and speech-language pathology.

Home Health & Hospice:

- **Waived onsite visits for both HHA and Hospice & Aide Supervision:** CMS is waiving the requirements at 42 CFR 418.76 (h) and 484.80(h), which require a nurse to conduct an onsite visit every two weeks. This would include waiving the requirements for a nurse or other professional to conduct an onsite visit every two weeks to evaluate if aides are providing care consistent with the care plan as this may not be physically possible for a period of time. This waiver is also temporarily suspending 2-week aide supervision requirement at 42 CFR §484.80(h)(1) by a registered nurse for home health agencies, but virtual supervision is encouraged during the period of the waiver.



DEPARTMENT OF SOCIAL SERVICES
DIVISION OF MEDICAL SERVICES
700 GOVERNORS DRIVE
PIERRE, SD 57501-2291
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March 29, 2020

ATTENTION: South Dakota Medicaid Providers

FROM: South Dakota Medicaid

RE: CMS 1135 Waiver Response

On March 19, 2020 the South Dakota Department of Social Services (DSS) requested federal authority from the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS) to provide flexibility for South Dakota's Medicaid program, including its recipients and providers during the COVID-19 pandemic through an 1135 waiver. The 1135 waiver allows the State Medicaid Agency to temporarily waive or modify certain Medicaid and Children's Health Insurance Program (CHIP) requirements to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in these programs.

On March 24, DSS received CMS' initial response, CMS responded to additional items in South Dakota's 1135 on March 26. DSS will seek CMS guidance on the flexibilities that were not addressed by CMS on March 24 and March 26. DSS will send additional communication as more information becomes available.

CMS's response (attached) addressed several items that pertain to provider requirements in order to maintain eligibility to participate with the Medicare and Medicaid programs. The relaxation of survey and conditions of participation were geared towards facilities are not specific to Medicaid and were broader than requested. These items do not impact Medicaid operations but directly impact providers and how they operate to allow health care providers to focus on direct patient care. South Dakota Medicaid encourages providers to review CMS's guidance directly regarding how the waived condition of participation provisions may affect their operations. CMS directly addressed flexibilities for the following providers, effective March 1, 2020:

1. **Hospitals, Psychiatric Hospitals and Critical Access Hospitals (CAHs):** The following provisions have been waived or granted to providers through the waiver of certain federal requirements:
 - a. Allows off-site EMTALA screenings in a location other than the hospital.

The Department of Social Services does not exclude, deny benefits to, or otherwise discriminate against any person on the basis of actual or perceived race, color, religion, national origin, sex, age, gender identity, sexual orientation or disability in admission or access to, or treatment or employment in its programs, activities, or services. For more information about this policy or to file a Discrimination Complaint you may contact: Discrimination Coordinator, Director of DSS Division of Legal Services, 700 Governor's Drive, Pierre SD 57501, 605-773-3305.

ATENCIÓN: si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-800-305-9673 (TTY: 711).

ACHTUNG: Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufnummer: 1-800-305-9673 (TTY: 711).

- b. Extends timeframes in surge situations for authentication of verbal/standing orders, reporting of patient deaths where a restraint was used on the patient, provision of a copy of medical records for patients, and completion of medical records following patient discharge.
- c. Waives patient rights related to patient visitation and seclusion for COVID-19 patients.
- d. Grants the ability for facemasks to be re-used in sterile compounding areas by staff during the same shift to conserve medical supplies.
- e. Waives certain discharge planning requirements for patients transitioning to long-term care options to expedite patient transfer and discharge.
- f. Waives requirements related to physician credentialing by the hospital's governing body in order to allow new and existing staff to provide direct patient care immediately.
- g. Waives provisions requiring hospitals to provide information on advance directive policies to patients to allow for more efficient management of a large number of patients.
- h. Allows hospitals to provide patient care or quarantine at non-hospital buildings/sites in the event of a surge when the state has approved the site as meeting requirements for patient comfort and patient and staff safety. DSS and DOH ask facilities to provide notice of any anticipated need for non-hospital buildings/site use.
- i. Allows Critical Access Hospitals to exceed the 25-bed limit and the 96 hours length of stay limit.

2. **Skilled nursing facilities (SNF):** The following requirements are waived: submission of staffing data through the Payroll-Based Journal system, recipient participation of in-person resident groups, and employment time limit due to training status training. In addition, CMS commented/clarified on two previously addressed areas advising that non-SNF buildings can be temporarily used when certain conditions are met and PASARR requirements are waived. The PASARR clarifications and non-SNF building use do not change guidance previously given to providers. SD providers should review the clarifications to operationalize them if needed due to COVID-19.
3. **Home health agencies (HHA):** OASIS reporting requirements have been waived or extended. Biweekly onsite visits by nurses and 2-week aide supervision requirements are waived with virtual supervision and actions encouraged. Initial assessments and statuses are permitted to be completed remotely or by record review. The waived requirements do not impact Medicaid day-to-day operations. Providers have increased flexibility to maximize practitioner care availability to those most in need.
4. **Hospice:** The requirements to use volunteers and provide certain non-core hospice services such as physical therapy are waived. Biweekly onsite visits by nurses and 2-week aide supervision requirements are waived with virtual supervision and actions encouraged. The timelines to complete assessments have been relaxed. The waived requirements do not impact Medicaid day-to-day operations. Providers have been given increased flexibility. Some recipients may not receive physical, occupational, or speech language therapy services while in hospice that they previously received.

Some of DSS's requests are still unanswered by CMS, including a request for confirmation of authority to implement a number of flexibilities related telemedicine services. The absence of a direct response from CMS on this topic has not impeded DSS's ability to implement flexibilities needed by South Dakota Medicaid providers to care for recipients. South Dakota Medicaid has implemented a

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wide range of temporary flexibilities to telemedicine services, effective March 13, 2020. A comprehensive review of those flexibilities can be found in the Provider Frequently Asked Questions as well as in the Telemedicine Provider Manual.

DSS will continue to work with CMS to clarify flexibilities that were requested but not directly addressed in CMS's response and will keep all stakeholders apprised. Additional 1135 waiver requests will be submitted if/as appropriate.

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OCCUPATIONAL THERAPY LICENSURE COMPACT

SECTION 1. PURPOSE

The purpose of this Compact is to facilitate interstate practice of Occupational Therapy with the goal of improving public access to Occupational Therapy services. The Practice of Occupational Therapy occurs in the State where the patient/client is located at the time of the patient/client encounter. The Compact preserves the regulatory authority of States to protect public health and safety through the current system of State licensure.

This Compact is designed to achieve the following objectives:

- A. Increase public access to Occupational Therapy services by providing for the mutual recognition of other Member State licenses;
- B. Enhance the States' ability to protect the public's health and safety;
- C. Encourage the cooperation of Member States in regulating multi-State Occupational Therapy Practice;
- D. Support spouses of relocating military members;
- E. Enhance the exchange of licensure, investigative, and disciplinary information between Member States;
- F. Allow a Remote State to hold a provider of services with a Compact Privilege in that State accountable to that State's practice standards; and
- G. Facilitate the use of Telehealth technology in order to increase access to Occupational Therapy services.

SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

- A. "Active Duty Military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapter 1209 and Section 1211.
- B. "Adverse Action" means any administrative, civil, equitable, or criminal action permitted by a State's laws which is imposed by a Licensing Board or other authority against an Occupational Therapist or Occupational Therapy Assistant, including actions against an individual's license or Compact Privilege such as censure, revocation, suspension, probation, monitoring of the Licensee, or restriction on the Licensee's practice.

- 31 C. "Alternative Program" means a non-disciplinary monitoring process approved by an
32 Occupational Therapy Licensing Board.
- 33 D. "Compact Privilege" means the authorization, which is equivalent to a license, granted by a
34 Remote State to allow a Licensee from another Member State to practice as an
35 Occupational Therapist or practice as an Occupational Therapy Assistant in the Remote
36 State under its laws and rules. The Practice of Occupational Therapy occurs in the Member
37 State where the patient/client is located at the time of the patient/client encounter.
- 38 E. "Continuing Competence/Education" means a requirement, as a condition of license
39 renewal, to provide evidence of participation in, and/or completion of, educational and
40 professional activities relevant to practice or area of work.
- 41 F. "Current Significant Investigative Information" means Investigative Information that a
42 Licensing Board, after an inquiry or investigation that includes notification and an opportunity
43 for the Occupational Therapist or Occupational Therapy Assistant to respond, if required by
44 State law, has reason to believe is not groundless and, if proved true, would indicate more
45 than a minor infraction.
- 46 G. "Data System" means a repository of information about Licensees, including but not limited
47 to license status, Investigative Information, Compact Privileges, and Adverse Actions.
- 48 H. "Encumbered License" means a license in which an Adverse Action restricts the Practice of
49 Occupational Therapy by the Licensee or said Adverse Action has been reported to the
50 National Practitioners Data Bank (NPDB).
- 51 I. "Executive Committee" means a group of directors elected or appointed to act on behalf of,
52 and within the powers granted to them by, the Commission.
- 53 J. "Home State" means the Member State that is the Licensee's Primary State of Residence.
- 54 K. "Impaired Practitioner" means individuals whose professional practice is adversely affected
55 by substance abuse, addiction, or other health-related conditions.
- 56 L. "Investigative Information" means information, records, and/or documents received or
57 generated by an Occupational Therapy Licensing Board pursuant to an investigation.
- 58 M. "Jurisprudence Requirement" means the assessment of an individual's knowledge of the
59 laws and rules governing the Practice of Occupational Therapy in a State.
- 60 N. "Licensee" means an individual who currently holds an authorization from the State to
61 practice as an Occupational Therapist or as an Occupational Therapy Assistant.
- 62 O. "Member State" means a State that has enacted the Compact.

- 63 P. "Occupational Therapist" means an individual who is licensed by a State to practice
64 Occupational Therapy.
- 65 Q. "Occupational Therapy Assistant" means an individual who is licensed by a State to assist in
66 the Practice of Occupational Therapy.
- 67 R. "Occupational Therapy," "Occupational Therapy Practice," and the "Practice of Occupational
68 Therapy" mean the care and services provided by an Occupational Therapist or an
69 Occupational Therapy Assistant as set forth in the Member State's statutes and regulations.
- 70 S. "Occupational Therapy Compact Commission" or "Commission" means the national
71 administrative body whose membership consists of all States that have enacted the
72 Compact.
- 73 T. "Occupational Therapy Licensing Board" or "Licensing Board" means the agency of a State
74 that is authorized to license and regulate Occupational Therapists and Occupational
75 Therapy Assistants.
- 76 U. "Primary State of Residence" means the state (also known as the Home State) in which an
77 Occupational Therapist or Occupational Therapy Assistant who is not Active Duty Military
78 declares a primary residence for legal purposes as verified by: driver's license, federal
79 income tax return, lease, deed, mortgage or voter registration or other verifying
80 documentation as further defined by Commission Rules.
- 81 V. "Remote State" means a Member State other than the Home State, where a Licensee is
82 exercising or seeking to exercise the Compact Privilege.
- 83 W. "Rule" means a regulation promulgated by the Commission that has the force of law.
- 84 X. "State" means any state, commonwealth, district, or territory of the United States of America
85 that regulates the Practice of Occupational Therapy.
- 86 Y. "Single-State License" means an Occupational Therapist or Occupational Therapy Assistant
87 license issued by a Member State that authorizes practice only within the issuing State and
88 does not include a Compact Privilege in any other Member State.
- 89 Z. "Telehealth" means the application of telecommunication technology to deliver Occupational
90 Therapy services for assessment, intervention and/or consultation.

91 **SECTION 3. STATE PARTICIPATION IN THE COMPACT**

92 A. To participate in the Compact, a Member State shall:

- 93 1. License Occupational Therapists and Occupational Therapy Assistants

- 94 2. Participate fully in the Commission's Data System, including but not limited to using the
95 Commission's unique identifier as defined in Rules of the Commission;
- 96 3. Have a mechanism in place for receiving and investigating complaints about Licensees;
- 97 4. Notify the Commission, in compliance with the terms of the Compact and Rules, of any
98 Adverse Action or the availability of Investigative Information regarding a Licensee;
- 99 5. Implement or utilize procedures for considering the criminal history records of applicants
100 for an initial Compact Privilege. These procedures shall include the submission of
101 fingerprints or other biometric-based information by applicants for the purpose of
102 obtaining an applicant's criminal history record information from the Federal Bureau of
103 Investigation and the agency responsible for retaining that State's criminal records;
- 104 a. A Member State shall, within a time frame established by the Commission,
105 require a criminal background check for a Licensee seeking/applying for a
106 Compact Privilege whose Primary State of Residence is that Member State, by
107 receiving the results of the Federal Bureau of Investigation criminal record
108 search, and shall use the results in making licensure decisions.
- 109 b. Communication between a Member State, the Commission and among
110 Member States regarding the verification of eligibility for licensure through the
111 Compact shall not include any information received from the Federal Bureau of
112 Investigation relating to a federal criminal records check performed by a Member
113 State under Public Law 92-544.
- 114 6. Comply with the Rules of the Commission;
- 115 7. Utilize only a recognized national examination as a requirement for licensure
116 pursuant to the Rules of the Commission; and
- 117 8. Have Continuing Competence/Education requirements as a condition for license
118 renewal.
- 119 B. A Member State shall grant the Compact Privilege to a Licensee holding a valid
120 unencumbered license in another Member State in accordance with the terms of the
121 Compact and Rules.
- 122 C. Member States may charge a fee for granting a Compact Privilege.
- 123 D. A Member State shall provide for the State's delegate to attend all Occupational Therapy
124 Compact Commission meetings.
- 125 E. Individuals not residing in a Member State shall continue to be able to apply for a Member
126 State's Single-State License as provided under the laws of each Member State. However,

127 the Single-State License granted to these individuals shall not be recognized as granting the
128 Compact Privilege in any other Member State. * *State of residence has to be in compact*
129 F. Nothing in this Compact shall affect the requirements established by a Member State for the
130 issuance of a Single-State License. *2nd license is not compact privilege*

131 **SECTION 4. COMPACT PRIVILEGE**

132 A. To exercise the Compact Privilege under the terms and provisions of the Compact, the
133 Licensee shall:

- 134 1. Hold a license in the Home State;
 - 135 2. Have a valid United States Social Security Number or National Practitioner Identification
136 number;
 - 137 3. Have no encumbrance on any State license;
 - 138 4. Be eligible for a Compact Privilege in any Member State in accordance with Section 4D,
139 F, G, and H;
 - 140 5. Have paid all fines and completed all requirements resulting from any Adverse Action
141 against any license or Compact Privilege, and two years have elapsed from the date of
142 such completion;
 - 143 6. Notify the Commission that the Licensee is seeking the Compact Privilege within a
144 Remote State(s);
 - 145 7. Pay any applicable fees, including any State fee, for the Compact Privilege;
 - 146 8. Complete a criminal background check in accordance with Section 3A(5);
 - 147 a. The Licensee shall be responsible for the payment of any fee associated with
148 the completion of a criminal background check.
 - 149 9. Meet any Jurisprudence Requirements established by the Remote State(s) in which the
150 Licensee is seeking a Compact Privilege; and
 - 151 10. Report to the Commission Adverse Action taken by any non-Member State within 30
152 days from the date the Adverse Action is taken.
- 153 B. The Compact Privilege is valid until the expiration date of the Home State license. The
154 Licensee must comply with the requirements of Section 4A to maintain the Compact
155 Privilege in the Remote State.
- 156 C. A Licensee providing Occupational Therapy in a Remote State under the Compact Privilege
157 shall function within the laws and regulations of the Remote State.

- 158 D. Occupational Therapy Assistants practicing in a Remote State shall be supervised by an
159 Occupational Therapist licensed or holding a Compact Privilege in that Remote State.
- 160 E. A Licensee providing Occupational Therapy in a Remote State is subject to that State's
161 regulatory authority. A Remote State may, in accordance with due process and that State's
162 laws, remove a Licensee's Compact Privilege in the Remote State for a specific period of
163 time, impose fines, and/or take any other necessary actions to protect the health and safety
164 of its citizens. The Licensee may be ineligible for a Compact Privilege in any State until the
165 specific time for removal has passed and all fines are paid.
- 166 F. If a Home State license is encumbered, the Licensee shall lose the Compact Privilege in any
167 Remote State until the following occur:
- 168 1. The Home State license is no longer encumbered; and
 - 169 2. Two years have elapsed from the date on which the Home State license is no longer
170 encumbered in accordance with Section 4(F)(1).
- 171 G. Once an Encumbered License in the Home State is restored to good standing, the Licensee
172 must meet the requirements of Section 4A to obtain a Compact Privilege in any Remote
173 State.
- 174 H. If a Licensee's Compact Privilege in any Remote State is removed, the individual may lose
175 the Compact Privilege in any other Remote State until the following occur:
- 176 1. The specific period of time for which the Compact Privilege was removed has ended;
 - 177 2. All fines have been paid and all conditions have been met;
 - 178 3. Two years have elapsed from the date of completing requirements for 4(H)(1) and (2);
179 and
 - 180 4. The Compact Privileges are reinstated by the Commission, and the compact Data
181 System is updated to reflect reinstatement.
- 182 I. If a Licensee's Compact Privilege in any Remote State is removed due to an erroneous
183 charge, privileges shall be restored through the compact Data System.
- 184 J. Once the requirements of Section 4H have been met, the license must meet the
185 requirements in Section 4A to obtain a Compact Privilege in a Remote State.

186 **SECTION 5: OBTAINING A NEW HOME STATE LICENSE BY VIRTUE OF COMPACT**
187 **PRIVILEGE**

- 188 A. An Occupational Therapist or Occupational Therapy Assistant may hold a Home State
189 license, which allows for Compact Privileges in Member States, in only one Member State at
190 a time.
- 191 B. If an Occupational Therapist or Occupational Therapy Assistant changes Primary State of
192 Residence by moving between two Member States:
- 193 1. The Occupational Therapist or Occupational Therapy Assistant shall file an application
194 for obtaining a new Home State license by virtue of a Compact Privilege, pay all
195 applicable fees, and notify the current and new Home State in accordance with
196 applicable Rules adopted by the Commission.
- 197 2. Upon receipt of an application for obtaining a new Home State license by virtue of
198 compact privilege, the new Home State shall verify that the Occupational Therapist or
199 Occupational Therapy Assistant meets the pertinent criteria outlined in Section 4 via the
200 Data System, without need for primary source verification except for:
- 201 a. an FBI fingerprint based criminal background check if not previously
202 performed or updated pursuant to applicable Rules adopted by the
203 Commission in accordance with Public Law 92-544;
- 204 b. other criminal background check as required by the new Home State; and
- 205 c. submission of any requisite Jurisprudence Requirements of the new
206 Home State.
- 207 3. The former Home State shall convert the former Home State license into a Compact
208 Privilege once the new Home State has activated the new Home State license in
209 accordance with applicable Rules adopted by the Commission.
- 210 4. Notwithstanding any other provision of this Compact, if the Occupational Therapist or
211 Occupational Therapy Assistant cannot meet the criteria in Section 4, the new Home
212 State shall apply its requirements for issuing a new Single-State License.
- 213 5. The Occupational Therapist or the Occupational Therapy Assistant shall pay all
214 applicable fees to the new Home State in order to be issued a new Home State license.
- 215 C. If an Occupational Therapist or Occupational Therapy Assistant changes Primary State of
216 Residence by moving from a Member State to a non-Member State, or from a non-Member
217 State to a Member State, the State criteria shall apply for issuance of a Single-State License
218 in the new State.
- 219 D. Nothing in this compact shall interfere with a Licensee's ability to hold a Single-State
220 License in multiple States; however, for the purposes of this compact, a Licensee shall have
221 only one Home State license.

222 E. Nothing in this Compact shall affect the requirements established by a Member State for the
223 issuance of a Single-State License.

224 **SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES**

225 A. Active Duty Military personnel, or their spouses, shall designate a Home State where the
226 individual has a current license in good standing. The individual may retain the Home State
227 designation during the period the service member is on active duty. Subsequent to
228 designating a Home State, the individual shall only change their Home State through
229 application for licensure in the new State or through the process described in Section 5.

230 **SECTION 7. ADVERSE ACTIONS**

231 A. A Home State shall have exclusive power to impose Adverse Action against an
232 Occupational Therapist's or Occupational Therapy Assistant's license issued by the Home
233 State.

234 B. In addition to the other powers conferred by State law, a Remote State shall have the
235 authority, in accordance with existing State due process law, to:

- 236 1. Take Adverse Action against an Occupational Therapist's or Occupational Therapy
237 Assistant's Compact Privilege within that Member State.
- 238 2. Issue subpoenas for both hearings and investigations that require the attendance and
239 testimony of witnesses as well as the production of evidence. Subpoenas issued by a
240 Licensing Board in a Member State for the attendance and testimony of witnesses or the
241 production of evidence from another Member State shall be enforced in the latter State
242 by any court of competent jurisdiction, according to the practice and procedure of that
243 court applicable to subpoenas issued in proceedings pending before it. The issuing
244 authority shall pay any witness fees, travel expenses, mileage and other fees required
245 by the service statutes of the State in which the witnesses or evidence are located.

246 C. For purposes of taking Adverse Action, the Home State shall give the same priority and
247 effect to reported conduct received from a Member State as it would if the conduct had
248 occurred within the Home State. In so doing, the Home State shall apply its own State laws
249 to determine appropriate action.

250 D. The Home State shall complete any pending investigations of an Occupational Therapist or
251 Occupational Therapy Assistant who changes Primary State of Residence during the course
252 of the investigations. The Home State, where the investigations were initiated, shall also
253 have the authority to take appropriate action(s) and shall promptly report the conclusions of
254 the investigations to the OT Compact Commission Data System. The Occupational Therapy
255 Compact Commission Data System administrator shall promptly notify the new Home State
256 of any Adverse Actions.

257 E. A Member State, if otherwise permitted by State law, may recover from the affected
258 Occupational Therapist or Occupational Therapy Assistant the costs of investigations and
259 disposition of cases resulting from any Adverse Action taken against that Occupational
260 Therapist or Occupational Therapy Assistant.

261 F. A Member State may take Adverse Action based on the factual findings of the Remote
262 State, provided that the Member State follows its own procedures for taking the Adverse
263 Action.

264 G. Joint Investigations

265 1. In addition to the authority granted to a Member State by its respective State
266 Occupational Therapy laws and regulations or other applicable State law, any Member
267 State may participate with other Member States in joint investigations of Licensees.

268 2. Member States shall share any investigative, litigation, or compliance materials in
269 furtherance of any joint or individual investigation initiated under the Compact.

270 H. If an Adverse Action is taken by the Home State against an Occupational Therapist's or
271 Occupational Therapy Assistant's license, the Occupational Therapist's or Occupational
272 Therapy Assistant's Compact Privilege in all other Member States shall be deactivated until
273 all encumbrances have been removed from the State license. All Home State disciplinary
274 orders that impose Adverse Action against an Occupational Therapist's or Occupational
275 Therapy Assistant's license shall include a Statement that the Occupational Therapist's or
276 Occupational Therapy Assistant's Compact Privilege is deactivated in all Member States
277 during the pendency of the order.

278 I. If a Member State takes Adverse Action, it shall promptly notify the administrator of the Data
279 System. The administrator of the Data System shall promptly notify the Home State of any
280 Adverse Actions by Remote States.

281 J. Nothing in this Compact shall override a Member State's decision that participation in an
282 Alternative Program may be used in lieu of Adverse Action.

283 **SECTION 8. ESTABLISHMENT OF THE OCCUPATIONAL THERAPY COMPACT**
284 **COMMISSION.**

285 A. The Compact Member States hereby create and establish a joint public agency known as
286 the Occupational Therapy Compact Commission:

287 1. The Commission is an instrumentality of the Compact States.

288 2. Venue is proper and judicial proceedings by or against the Commission shall be brought
289 solely and exclusively in a court of competent jurisdiction where the principal office of the
290 Commission is located. The Commission may waive venue and jurisdictional defenses to

291 the extent it adopts or consents to participate in alternative dispute resolution
292 proceedings.

293 3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

294 B. Membership, Voting, and Meetings

295 1. Each Member State shall have and be limited to one (1) delegate selected by that
296 Member State's Licensing Board.

297 2. The delegate shall be either:

298 a. A current member of the Licensing Board, who is an Occupational Therapist,
299 Occupational Therapy Assistant, or public member; or

300 b. An administrator of the Licensing Board.

301 3. Any delegate may be removed or suspended from office as provided by the law of the
302 State from which the delegate is appointed.

303 4. The Member State board shall fill any vacancy occurring in the Commission within 90
304 days.

305 5. Each delegate shall be entitled to one (1) vote with regard to the promulgation of Rules
306 and creation of bylaws and shall otherwise have an opportunity to participate in the
307 business and affairs of the Commission. A delegate shall vote in person or by such other
308 means as provided in the bylaws. The bylaws may provide for delegates' participation in
309 meetings by telephone or other means of communication.

310 6. The Commission shall meet at least once during each calendar year. Additional
311 meetings shall be held as set forth in the bylaws.

312 7. The Commission shall establish by Rule a term of office for delegates.

313 C. The Commission shall have the following powers and duties:

314 1. Establish a Code of Ethics for the Commission;

315 2. Establish the fiscal year of the Commission;

316 3. Establish bylaws;

317 4. Maintain its financial records in accordance with the bylaws;

318 5. Meet and take such actions as are consistent with the provisions of this Compact and
319 the bylaws;

- 320 6. Promulgate uniform Rules to facilitate and coordinate implementation and administration
321 of this Compact. The Rules shall have the force and effect of law and shall be binding in
322 all Member States;
- 323 7. Bring and prosecute legal proceedings or actions in the name of the Commission,
324 provided that the standing of any State Occupational Therapy Licensing Board to sue or
325 be sued under applicable law shall not be affected;
- 326 8. Purchase and maintain insurance and bonds;
- 327 9. Borrow, accept, or contract for services of personnel, including, but not limited to,
328 employees of a Member State;
- 329 10. Hire employees, elect or appoint officers, fix compensation, define duties, grant such
330 individuals appropriate authority to carry out the purposes of the Compact, and establish
331 the Commission's personnel policies and programs relating to conflicts of interest,
332 qualifications of personnel, and other related personnel matters;
- 333 11. Accept any and all appropriate donations and grants of money, equipment, supplies,
334 materials and services, and receive, utilize and dispose of the same; provided that at all
335 times the Commission shall avoid any appearance of impropriety and/or conflict of
336 interest;
- 337 12. Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold,
338 improve or use, any property, real, personal or mixed; provided that at all times the
339 Commission shall avoid any appearance of impropriety;
- 340 13. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any
341 property real, personal, or mixed;
- 342 14. Establish a budget and make expenditures;
- 343 15. Borrow money;
- 344 16. Appoint committees, including standing committees composed of members, State
345 regulators, State legislators or their representatives, and consumer representatives, and
346 such other interested persons as may be designated in this Compact and the bylaws;
- 347 17. Provide and receive information from, and cooperate with, law enforcement agencies;
- 348 18. Establish and elect an Executive Committee; and
- 349 19. Perform such other functions as may be necessary or appropriate to achieve the
350 purposes of this Compact consistent with the State regulation of Occupational Therapy
351 licensure and practice.

352 D. The Executive Committee

353 The Executive Committee shall have the power to act on behalf of the Commission according to
354 the terms of this Compact.

355 1. The Executive Committee shall be composed of nine members:

- 356 a. Seven voting members who are elected by the Commission from the current
357 membership of the Commission;
- 358 b. One ex-officio, nonvoting member from a recognized national Occupational Therapy
359 professional association; and
- 360 c. One ex-officio, nonvoting member from a recognized national Occupational Therapy
361 certification organization.

362 2. The ex-officio members will be selected by their respective organizations.

363 3. The Commission may remove any member of the Executive Committee as provided in
364 bylaws.

365 4. The Executive Committee shall meet at least annually.

366 5. The Executive Committee shall have the following Duties and responsibilities:

- 367 a. Recommend to the entire Commission changes to the Rules or bylaws, changes to
368 this Compact legislation, fees paid by Compact Member States such as annual dues,
369 and any Commission Compact fee charged to Licensees for the Compact Privilege;
- 370 b. Ensure Compact administration services are appropriately provided, contractual or
371 otherwise;
- 372 c. Prepare and recommend the budget;
- 373 d. Maintain financial records on behalf of the Commission;
- 374 e. Monitor Compact compliance of Member States and provide compliance reports to
375 the Commission;
- 376 f. Establish additional committees as necessary; and
- 377 g. Perform other duties as provided in Rules or bylaws.

378 E. Meetings of the Commission

379 1. All meetings shall be open to the public, and public notice of meetings shall be given in
380 the same manner as required under the Rulemaking provisions in Section 10.

381 2. The Commission or the Executive Committee or other committees of the Commission
382 may convene in a closed, non-public meeting if the Commission or Executive Committee
383 or other committees of the Commission must discuss:

- 384 a. Non-compliance of a Member State with its obligations under the Compact;
385 b. The employment, compensation, discipline or other matters, practices or procedures
386 related to specific employees or other matters related to the Commission's internal
387 personnel practices and procedures;
388 c. Current, threatened, or reasonably anticipated litigation;
389 d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real
390 estate;
391 e. Accusing any person of a crime or formally censuring any person;
392 f. Disclosure of trade secrets or commercial or financial information that is privileged or
393 confidential;
394 g. Disclosure of information of a personal nature where disclosure would constitute a
395 clearly unwarranted invasion of personal privacy;
396 h. Disclosure of investigative records compiled for law enforcement purposes;
397 i. Disclosure of information related to any investigative reports prepared by or on
398 behalf of or for use of the Commission or other committee charged with responsibility
399 of investigation or determination of compliance issues pursuant to the Compact; or
400 j. Matters specifically exempted from disclosure by federal or Member State statute.

401 3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the
402 Commission's legal counsel or designee shall certify that the meeting may be closed and
403 shall reference each relevant exempting provision.

404 4. The Commission shall keep minutes that fully and clearly describe all matters discussed
405 in a meeting and shall provide a full and accurate summary of actions taken, and the
406 reasons therefore, including a description of the views expressed. All documents
407 considered in connection with an action shall be identified in such minutes. All minutes
408 and documents of a closed meeting shall remain under seal, subject to release by a
409 majority vote of the Commission or order of a court of competent jurisdiction.

410 F. Financing of the Commission

411 1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its
412 establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.
3. The Commission may levy on and collect an annual assessment from each Member State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved by the Commission each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a Rule binding upon all Member States.
4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Member States, except by and with the authority of the Member State.
5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.
2. The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided

448 further, that the actual or alleged act, error, or omission did not result from that person's
449 intentional or willful or wanton misconduct.

- 450 3. The Commission shall indemnify and hold harmless any member, officer, executive
451 director, employee, or representative of the Commission for the amount of any
452 settlement or judgment obtained against that person arising out of any actual or alleged
453 act, error or omission that occurred within the scope of Commission employment, duties,
454 or responsibilities, or that such person had a reasonable basis for believing occurred
455 within the scope of Commission employment, duties, or responsibilities, provided that
456 the actual or alleged act, error, or omission did not result from the intentional or willful or
457 wanton misconduct of that person.

458 **SECTION 9. DATA SYSTEM**

- 459 A. The Commission shall provide for the development, maintenance, and utilization of a
460 coordinated database and reporting system containing licensure, Adverse Action, and
461 Investigative Information on all licensed individuals in Member States.
- 462 B. A Member State shall submit a uniform data set to the Data System on all individuals to
463 whom this Compact is applicable (utilizing a unique identifier) as required by the Rules of
464 the Commission, including:
- 465 1. Identifying information;
 - 466 2. Licensure data;
 - 467 3. Adverse Actions against a license or Compact Privilege;
 - 468 4. Non-confidential information related to Alternative Program participation;
 - 469 5. Any denial of application for licensure, and the reason(s) for such denial;
 - 470 6. Other information that may facilitate the administration of this Compact, as determined
471 by the Rules of the Commission; and
 - 472 7. Current Significant Investigative Information.
- 473 C. Current Significant Investigative Information and other Investigative Information pertaining to
474 a Licensee in any Member State will only be available to other Member States.
- 475 D. The Commission shall promptly notify all Member States of any Adverse Action taken
476 against a Licensee or an individual applying for a license. Adverse Action information
477 pertaining to a Licensee in any Member State will be available to any other Member State.
- 478 E. Member States contributing information to the Data System may designate information that
479 may not be shared with the public without the express permission of the contributing State.

- F. Any information submitted to the Data System that is subsequently required to be expunged by the laws of the Member State contributing the information shall be removed from the Data System.

SECTION 10. RULEMAKING

- A. The Commission shall exercise its Rulemaking powers pursuant to the criteria set forth in this Section and the Rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each Rule or amendment.
- B. The Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the Compact, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force and effect.
- C. If a majority of the legislatures of the Member States rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within 4 years of the date of adoption of the Rule, then such Rule shall have no further force and effect in any Member State.
- D. Rules or amendments to the Rules shall be adopted at a regular or special meeting of the Commission.
- E. Prior to promulgation and adoption of a final Rule or Rules by the Commission, and at least thirty (30) days in advance of the meeting at which the Rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:
1. On the website of the Commission or other publicly accessible platform; and
 2. On the website of each Member State Occupational Therapy Licensing Board or other publicly accessible platform or the publication in which each State would otherwise publish proposed Rules.
- F. The Notice of Proposed Rulemaking shall include:
1. The proposed time, date, and location of the meeting in which the Rule will be considered and voted upon;
 2. The text of the proposed Rule or amendment and the reason for the proposed Rule;
 3. A request for comments on the proposed Rule from any interested person; and
 4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

- 512 G. Prior to adoption of a proposed Rule, the Commission shall allow persons to submit written
513 data, facts, opinions, and arguments, which shall be made available to the public.
- 514 H. The Commission shall grant an opportunity for a public hearing before it adopts a Rule or
515 amendment if a hearing is requested by:
- 516 1. At least twenty five (25) persons;
- 517 2. A State or federal governmental subdivision or agency; or
- 518 3. An association or organization having at least twenty five (25) members.
- 519 I. If a hearing is held on the proposed Rule or amendment, the Commission shall publish the
520 place, time, and date of the scheduled public hearing. If the hearing is held via electronic
521 means, the Commission shall publish the mechanism for access to the electronic hearing.
- 522 1. All persons wishing to be heard at the hearing shall notify the executive director of the
523 Commission or other designated member in writing of their desire to appear and testify
524 at the hearing not less than five (5) business days before the scheduled date of the
525 hearing.
- 526 2. Hearings shall be conducted in a manner providing each person who wishes to comment
527 a fair and reasonable opportunity to comment orally or in writing.
- 528 3. All hearings will be recorded. A copy of the recording will be made available on request.
- 529 4. Nothing in this section shall be construed as requiring a separate hearing on each Rule.
530 Rules may be grouped for the convenience of the Commission at hearings required by
531 this section.
- 532 J. Following the scheduled hearing date, or by the close of business on the scheduled hearing
533 date if the hearing was not held, the Commission shall consider all written and oral
534 comments received.
- 535 K. If no written notice of intent to attend the public hearing by interested parties is received, the
536 Commission may proceed with promulgation of the proposed Rule without a public hearing.
- 537 L. The Commission shall, by majority vote of all members, take final action on the proposed
538 Rule and shall determine the effective date of the Rule, if any, based on the Rulemaking
539 record and the full text of the Rule.
- 540 M. Upon determination that an emergency exists, the Commission may consider and adopt an
541 emergency Rule without prior notice, opportunity for comment, or hearing, provided that the
542 usual Rulemaking procedures provided in the Compact and in this section shall be
543 retroactively applied to the Rule as soon as reasonably possible, in no event later than

ninety (90) days after the effective date of the Rule. For the purposes of this provision, an emergency Rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;
2. Prevent a loss of Commission or Member State funds;
3. Meet a deadline for the promulgation of an administrative Rule that is established by federal law or Rule; or
4. Protect public health and safety.

N. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

SECTION 11. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of State government in each Member State shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the Rules promulgated hereunder shall have standing as statutory law.
2. All courts shall take judicial notice of the Compact and the Rules in any judicial or administrative proceeding in a Member State pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the Commission.
3. The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated Rules.

B. Default, Technical Assistance, and Termination

575 1. If the Commission determines that a Member State has defaulted in the performance of
576 its obligations or responsibilities under this Compact or the promulgated Rules, the
577 Commission shall:

578 a. Provide written notice to the defaulting State and other Member States of the nature
579 of the default, the proposed means of curing the default and/or any other action to be
580 taken by the Commission; and

581 b. Provide remedial training and specific technical assistance regarding the default.

582 2. If a State in default fails to cure the default, the defaulting State may be terminated from
583 the Compact upon an affirmative vote of a majority of the Member States, and all rights,
584 privileges and benefits conferred by this Compact may be terminated on the effective
585 date of termination. A cure of the default does not relieve the offending State of
586 obligations or liabilities incurred during the period of default.

587 3. Termination of membership in the Compact shall be imposed only after all other means
588 of securing compliance have been exhausted. Notice of intent to suspend or terminate
589 shall be given by the Commission to the governor, the majority and minority leaders of
590 the defaulting State's legislature, and each of the Member States.

591 4. A State that has been terminated is responsible for all assessments, obligations, and
592 liabilities incurred through the effective date of termination, including obligations that
593 extend beyond the effective date of termination.

594 5. The Commission shall not bear any costs related to a State that is found to be in default
595 or that has been terminated from the Compact, unless agreed upon in writing between
596 the Commission and the defaulting State.

597 6. The defaulting State may appeal the action of the Commission by petitioning the U.S.
598 District Court for the District of Columbia or the federal district where the Commission
599 has its principal offices. The prevailing member shall be awarded all costs of such
600 litigation, including reasonable attorney's fees.

601 C. Dispute Resolution

602 1. Upon request by a Member State, the Commission shall attempt to resolve disputes
603 related to the Compact that arise among Member States and between member and non-
604 Member States.

605 2. The Commission shall promulgate a Rule providing for both mediation and binding
606 dispute resolution for disputes as appropriate.

607 D. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.
2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a Member State in default to enforce compliance with the provisions of the Compact and its promulgated Rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.
3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or State law.

**SECTION 12. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR
OCCUPATIONAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND
AMENDMENT**

- A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth Member State. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of Rules. Thereafter, the Commission shall meet and exercise Rulemaking powers necessary to the implementation and administration of the Compact.
- B. Any State that joins the Compact subsequent to the Commission's initial adoption of the Rules shall be subject to the Rules as they exist on the date on which the Compact becomes law in that State. Any Rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that State.
- C. Any Member State may withdraw from this Compact by enacting a statute repealing the same.
 1. A Member State's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.
 2. Withdrawal shall not affect the continuing requirement of the withdrawing State's Occupational Therapy Licensing Board to comply with the investigative and Adverse Action reporting requirements of this act prior to the effective date of withdrawal.
- D. Nothing contained in this Compact shall be construed to invalidate or prevent any Occupational Therapy licensure agreement or other cooperative arrangement between a Member State and a non-Member State that does not conflict with the provisions of this Compact.

- 642 E. This Compact may be amended by the Member States. No amendment to this Compact
643 shall become effective and binding upon any Member State until it is enacted into the laws
644 of all Member States.

645 **SECTION 13. CONSTRUCTION AND SEVERABILITY**

646 This Compact shall be liberally construed so as to effectuate the purposes thereof. The
647 provisions of this Compact shall be severable and if any phrase, clause, sentence or
648 provision of this Compact is declared to be contrary to the constitution of any Member State
649 or of the United States or the applicability thereof to any government, agency, person, or
650 circumstance is held invalid, the validity of the remainder of this Compact and the
651 applicability thereof to any government, agency, person, or circumstance shall not be
652 affected thereby. If this Compact shall be held contrary to the constitution of any Member
653 State, the Compact shall remain in full force and effect as to the remaining Member States
654 and in full force and effect as to the Member State affected as to all severable matters.

655 **SECTION 14. BINDING EFFECT OF COMPACT AND OTHER LAWS**

- 656 A. A Licensee providing Occupational Therapy in a Remote State under the Compact Privilege
657 shall function within the laws and regulations of the Remote State.
- 658 B. Nothing herein prevents the enforcement of any other law of a Member State that is not
659 inconsistent with the Compact.
- 660 C. Any laws in a Member State in conflict with the Compact are superseded to the extent of the
661 conflict.
- 662 D. Any lawful actions of the Commission, including all Rules and bylaws promulgated by the
663 Commission, are binding upon the Member States.
- 664 E. All agreements between the Commission and the Member States are binding in accordance
665 with their terms.
- 666 F. In the event any provision of the Compact exceeds the constitutional limits imposed on the
667 legislature of any Member State, the provision shall be ineffective to the extent of the conflict
668 with the constitutional provision in question in that Member State.